had charged: "The only question in this case is, what was the condition of these two properties at the time of the sheriff's sale? If the condition of the properties was such as to indicate that the occupants of property now owned by the plaintiff used the alley in question and had a right to do so, the verdict should be for the plaintiff." This was affirmed by the Supreme Court.

It will be seen by this short review of cases that there is a considerable conflict of authority, leading to no little uncertainty, but that on the whole it can hardly be said of ways by implication that they are favorites of the common law. H. B., Jr.

Supreme Court of Michigan.

JOHN HANCOCK MUTUAL LIFE INS. CO. *v.* MOORE, Adm'r of TODD.

A party cannot be compelled to accept his adversary's admission in lieu of affirmative evidence offered by himself.

Where a paper is admissible for one purpose, it does not become inadmissible because it cannot be used for another. Thus where an administrator sues on a life insurance policy, his letters of administration are admissible in proof of his representative character, although they are not in such case evidence of the death of the insured.

Though there is no presumption of death from the fact of disappearance until after seven years, yet a jury may infer death at an earlier date from circumstances or any other satisfactory evidence.

A clause in a policy of life insurance that the policy shall be void if the assured die by his own hand, is in the nature of a penalty or forfeiture, and the burden is on the insurers to show that it has been incurred.

Such forfeiture is not incurred by self-destruction while insane, and it makes no difference whether the language of the policy is "die by his own hand" or by "suicide." The terms are synonymous.

Where the jury find the fact of death of the assured, but in answer to special instructions to find whether or not he committed suicide, they return that they cannot say, this does not vitiate the verdict. A general verdict for the plaintiff would not be vitiated even by a finding that the assured committed suicide, unless the jury also find that it was voluntary.

Error to Wayne Circuit.

The suit below was on a life policy in favor of William Todd, who was claimed to be dead, but whose death was sought to be proved by his disappearance, aided by circumstantial testimony.

The defence relied on was, 1. That he was not shown to be dead; and 2. That if dead he died by his own act. The policy contained this clause: "3. That in case the person whose life is hereby insured shall die by his own hand," &c., "this policy shall be void, and the company shall not be liable for the loss."

Griffin and *Dickinson*, for plaintiff in error.

A. H. Wilkinson and *Hoyt Post*, for defendant in error.

The opinion of the court was delivered by

CAMPBELL, J.—An error is alleged on the reception in evidence of the letters of administration. Defendants below admitted their existence and the representative character of Mr. Moore, but objected to the admission of the letters themselves, because they were not evidence of the death of Todd. The court held they were not evidence of death, but admitted them in proof.

We do not quite comprehend the objection. A party can never be compelled to accept his adversary's admission in lieu of record evidence unless he chooses, and a paper which is admissible for one purpose does not become inadmissible because it cannot be used for another. The letters were proper to show the plaintiff's capacity, and could not be excluded on any theory. Whether they proved death was another matter, and in this case the court held they did not.

The same remark will apply to the proofs of death submitted to the company under the requirements of the policy. The admission that such proofs had been furnished did not render it improper to produce the documentary evidence, and prevented any subsequent disputes as to the meaning and extent of admissions.

And it would be difficult to see how a party can be damnified by proof which accords with his admissions.

The principal questions arise upon the rulings in the cause as it went to the jury.

The defendant below's first request was as follows: "That under the law there is no presumption of death until after a disappearance of seven years, and that the burden of proof is upon the plaintiff in this case to show the fact of death. That it is not incumbent upon the insurance company to show that the insured it not dead, until after the lapse of seven years from date of disappearance."

This the court gave; but stated to the jury in substance that death might be shown otherwise than by the production of an eyewitness to the act, and might be shown by satisfactory circumstances.

This was unquestionably correct. There is no doctrine which, in civil cases, requires death to be proved by any more conclusive or peculiar evidence than any other fact material to recovery in an

action. If the testimony satisfies the court or jury passing on facts, and is reasonably sufficient, and compels belief, the conclusion is certainly lawful.

Upon the rulings of the court upon the second, third and fourth requests of defendant below no exception was taken. They were substantially granted, and related to the necessity of diligent search and inquiry after the missing man, and the question of suicide and the presumption of sanity.

Three requests were refused, which were, 5. That there was no evidence of Todd's insanity at the time of his disappearance; 6. That there was no evidence of his death; and, 7. That under the evidence plaintiff could not recover.

The evidence tended to show that Todd had been, for a considerable time, laboring under a very severe and dangerous disease of the brain and spine, which in the opinion of his physician must have proved fatal in a short time, and most probably have rendered him insane. There was evidence of its effect on his feelings and conduct, indicating that his mind was affected by the disease. The testimony was such as to have a decided bearing on the question of his sanity, and it was for the jury to pass upon it. It is not for us to review their finding, if there was evidence before them to be acted on. We have no means of knowing what they thought of it, as they have not found specially on the subject.

As to the fact of death, we think there was not only competent evidence, but such as they were fully justified in accepting as complete. A sudden disappearance, and the failure to discover any traces of a man who, if living, could not easily have gone unnoticed, and who was in such a physical and mental condition as to excite the anxiety of his friends upon this very subject, cannot be said to afford no evidence tending to prove his death. The instructions of the court as to the diligence needed for a search after him, were full and correct. The assiduity of friends in pursuing the inquiry was great and constant. We think the jury had enough to act upon.

They found a general verdict for the plaintiff. They were asked to find whether Todd committed suicide, and answered they could not say. It is claimed this vitiated their verdict.

Plaintiffs in error insist that the burden of proof is on the administrator to prove that Todd did not die by his own hand, and

also that if he did so, the policy is void whether he was sane or insane.

The condition which makes the policy void in case of such a death is in the nature of a penalty or forfeiture, and the burden is on the insurers to show it, and not on the insured to negative it. There can be no presumption of wrongdoing without proof, and the insured is not bound to show that his intestate had done no act to destroy an existing right in the policy. This would be to reverse the burden of proof generally adopted. Usually, where the death is proved by eye-witnesses the circumstances are such that the order of proof becomes less material, and the facts connected with the death may be so peculiar as to need explaining. Of course if the plaintiff suing upon a policy throws doubt over his own case, or if his witnesses by their examination and cross-examination leave his case imperfect, he must clear it up or be defeated. But when all the testimony on both sides is in, any inference which will lead to a forfeiture can only be properly drawn from a preponderance of proof that the forfeiture has been incurred.

The forfeiture in this case was to arise if the insured died by his own hand. Some stress is laid on the term "suicide," as if it means a wrongful act, or self-murder. It has no such restricted meaning. It means self-killing, just as "homicide" means killing any one else. But there may be excusable homicide as well as felonious, and suicide was only cognizable at law when the person was *felo de se*, or guilty of a felonious act. If *non compos mentis*, the actor in homicide or suicide commits no crime. In one sense a man dies by his own hand who kills himself, whether sound or frenzied. But the condition in this policy cannot be construed to cause a forfeiture for acts involving no evil will. The clause punishing the insured for self-slaughter is a penal clause in the strictest sense of the term, and embraces several other acts in the same penalty, all of which involve voluntary wrongdoing. They are, death by duelling, or by the hands of justice, or in the violation of the laws, or impairing health by vice or intemperance. When an act which is to cause forfeiture is classed among such wrongful conduct, it is fairly to be inferred that it is regarded as *ejusdem generis*, and depending on the same reasons.

A construction which punishes a person who is not in fault is not to be favored, if it can be allowed at all. The very object of

life insurance is to provide for death by disease or in the ordinary course of nature. Death by his own hands, in the case of one *non compos* is as much the result of disease as death by fever or consumption. The act of an insane man is morally no more his act than if it were mechanical.

We do not think it profitable to discuss the subject at large. The authorities differ somewhat, but we do not think there is any such preponderance of good sense in those decisions which treat an insane person like one in his senses, that we care to follow them.

A finding of suicide, without a further finding that it was voluntary, would not conflict with the general verdict, and would be immaterial.

There is no error in the judgment, and it must be affirmed with costs.

The foregoing case treats of many important branches of the law of insurance. It is not proposed to discuss all of them, but to submit some remarks respecting one or two only.

I. The first matter referred to, viz.: the admissibility of letters of administration to prove death, although not principally in question, deserves notice on account of its importance, and the absence, perhaps, of final authority settling it.

The grant of letters of administration by a probate court is regarded in the law as a judgment. But if *in personam*, it is clearly no judgment to which the insurer of the decedent's life is a party, or even a privy, and therefore, according to the familiar rule, does not bind him. The courts, however, regard it as a judgment *in rem*, not *in personam*, and inconsistent decisions have been made in the attempt to apply the rule that a judgment *in rem* binds all the world.

In the notes to the *Duchess of Kingston's Case*, 2 Smith's Lead. Cas. 622, it is laid down that "the universal effect of a judgment *in rem* depends, it is submitted, on this principle, viz.: that it is a solemn declaration, proceeding from an accredited quarter, concerning the status of the thing adjudicated upon, and *ipso facto* renders it such as it is thereby declared to be."

If the court has jurisdiction, the decision upon the *status* of the thing is final. But what is *status?* There is a *status* of things, and a *status* of men. The word is not only of Roman origin, but means a thing known to the Roman law, derived by us from those English courts where the civil law is the basis of the ecclesiastical. In the Digest (IV. 5, 11) we read that the *status* of men is composed of three heads: 1. Liberty; 2. Citizenship; 3. Family. Each of these three heads is a thing, and an adjudication as to the *status* of the thing, is, properly speaking, a judgment *in rem*. For example, a husband applies for administration upon his deceased wife's property; the court decides that his family *status* entitles him to the letters, and so awards them. True, the judgment relates in a measure to the rights of a person, but so must every judgment, more or less, and if the intervention of a personal right is to make a judgment one *in personam*, obviously the distinction is annihilated. Now the adjudication being essentially as to the *status* of the applicant, it may readily have conceded to it all the validity it requires,

and while in another court the grounds on which it proceeds may not be controverted in order to impeach the result, so, too, by a parity of reason, is the effect of those grounds limited to the proof of the result. No authority will then be demanded to satisfy the mind that because the Probate Court decides that the wife is dead, and therefore the husband being so entitled, may not in another court, prove his wife's death by proof of his own *status*.

These views are in entire conformity with the opinion of the judges in the *Duchess of Kingston's Case*, *supra*, and the learned notes of the editors, and perhaps the reader will have already deduced them for himself. The apology is, that if courts of justice and learned writers like Greenleaf (Ev. 1, sect. 550), can hold the opposite opinion, it is not useless to combat it.

It is not enough to argue that if the letters should not be proof, yet they should be evidence, for any evidence may be held sufficient in a given case, and so amount to proof.

The decision which is probably the latest, as it is certainly the most authoritative, is that of *Insurance Co.* v. *Tisdale*, 15 Am. Law Reg. N. S. 412, where the Supreme Court of the United States held that in an action on a policy by a wife in whose favor it had been issued, the fact of letters of administration having been granted to the plaintiff was no evidence of the death of the assured. The fact that the letters had been granted to the plaintiff, of course made no difference, for the suit was in her individual capacity as beneficiary. Judge HUNT in his opinion cites numerous cases where the decisions were very analogous in principle, as well as many where the facts were similar. The case will well repay perusal, and go far to settle the law upon the subject. A very interesting discussion also upon the effect of a judgment of a probate court will be found in *Roderigas* v. *East River Saving Institution*, 15 Am. Law Reg. N. S. 205, and Judge REDFIELD'S note.

II. Another matter of great importance is the effect of clauses in policies stipulating against suicide, and their effect when suicide is committed in a state of insanity. The subject is one which is literally unsettled by the cases, and their name is legion. An extended review of them is unnecessary, because Mr. Bigelow, in his Insurance Cases, has exhibited a panorama, not to say a menagerie, of text and notes, in which, in the language of Lord ELDON, referring to the cases on the rule in *Shelley's Case*, 2 Bligh 50, "the mind is overwhelmed by their multitude and the subtlety of the distinction between them."

The question in the cases is the proper construction of the written contracts made by the parties, together, of course, with its application to the facts proved on the trial, or admitted in the pleadings. No one doubts that the contract of insurance should be construed like any other contract, but, it is submitted, one may fairly doubt whether the usual construction put upon the clause is correct. The courts generally, if not always, regard the clause as providing for a forfeiture, and the law generally, if not always, abhors a forfeiture, just as nature used to abhor a vacuum before the time of Newton. The words in which the condition, as it is called, is expressed are not uniform; but take a common form, "provided that if the assured shall commit suicide," &c.; that does not necessarily import a condition. It is sometimes loosely said that the term "provided that" or "proviso" creates a condition; to such as say so a diligent perusal of *Lord Cromwell's Case*, 2 Coke R. 69 a, is recommended. It would be well to read it as we are advised to read Littleton, viz., by meditation on every sentence, as thereby it is confidently predicted the reader will find many things of value.

It will there be found that the term may indicate a covenant, and even that it may be used merely as a limitation. In other words, it is not to be construed to defeat the parties' intention, but to aid it, just as Lord HARDWICKE declared that the Statute of Frauds was not meant to advance fraud but to suppress it.

In the construction of contracts regard should be had to notorious facts existing at the time of inception. Now what more notorious than this: that all calculations as to the probable duration of a man's life are based upon experience of the ordinary course of nature in its broadest sense, *i. e.*, the *non ego*, and that any extraordinary, unnatural phenomenon will render them worse than useless? History, we are told by high authority, can never be a science; we will never be able to predict the future with scientific certainty, because the future will be what man's free will makes it, and who can tell what motives will exist, and how they will affect their subject? Mr. Buckle may answer this, but Mr. Buckle is not yet universally recognised as being all he professes, and authority and reason, those two faithful witnesses, as COKE calls them, have not approved his doctrines. Now supply a man already endowed with the power to do (for our purposes) as he likes, with a powerful motive, sane or insane, to put an immediate end to his life, and who can tell how long he will live, or what premium to charge? No disciple of the philosopher just named would invest his money in insurance stock if it was liable in all cases of suicide. His doctrines would be found "inapplicable" to the question in all probability, and a change very speedily recommended.

Is it not probable that contracts of insurance on life are made with reference to this general belief? It is not unreasonable to interpret the contract to mean this. That the man is insured against death by the ordinary course of things, *i. e.*, disease or casualties happening through no fault of his own, that is to say, the general words of assurance are restricted by the proviso, which defines the limits of the contract, instead of seeking to divest a right in the contingency of the insured breaking a condition.

It is not always that such a construction might be consistent with the words of the policy, and others may not be drawn artistically, but we may still yield something *propter simplicitatem laicorum* and not uproot the principles of construction.

If the construction suggested be accepted, then voluntary killing of one's self, sane or insane, death by the hands of justice for a crime voluntarily committed (for there must be the willing mind), death in a duel to which the insured voluntarily submitted, would be cases for which there was never an intention to insure; never an *oggregatio mentium*, never, therefore, any contract at all: *Kingsford* v. *Merry*, 1 H. & N. 503; *Deccan* v. *Shippen*, 11 Casey 239.

If the construction be accepted then the law would be simple, and the question always one of fact. Did the insured voluntarily cause his own death, if so, the insurer is not liable, if not he is. And an approach seemed to be made to this in the two English cases usually termed the leading ones: *Borrodaile* v. *Hunter*, 5 M. & G. 639, and *Clift* v. *Schwabe*, 3 M., G. & S. 437. In both cases the assured, being more or less insane at the time, voluntarily killed himself; and in both cases it was held that the insurer was not liable. The later decision of Vice Chancellor WOOD in *Horn* v. *Insurance Co.*, 30 Law J. (Chanc.) 511, is not inconsistent because there was in the policy in that case no provision on the subject. The learned judge held that suicide, in a state of temporary insanity, was not a legal offence, and the contract would

not be void on grounds of public policy, and therefore was valid, and in that he was doubtless right, for the words of assurance were general and unrestricted.

As to the equivalence of "suicide" and "die by his own hand" no remarks are intended to be made. If courts will pursue the beaten track of construction, it appears hopeless to begin a definition of the words that will give them trouble, and so too of the burden of proof as to the case being within an exception to the policy; that is only one of many questions the occurrence of which is believed to be in great measure factitious and unnecessary.

Mr. Bigelow in his note to *Borrodaile* v. *Hunter*, 2 Ins. Cas. 304, concludes that "the weight of American authority seems decidedly in favor of the rule in *Dean* v. *American Life Ins. Co.*, 4 Allen 96, that a life policy, with a condition against suicide, is only avoided when the act, in a case of insanity, is committed intentionally, and with full knowledge of its nature and consequences."

The subject, however, notwithstanding this opinion, is not and cannot be called settled even by weight of authority, so long as courts of undoubted reputation differ, and as the Supreme Court of the United States has no authority to settle the question for the whole country, its decision in *Insurance Co.* v. *Terry*, 15 Wall. 580, will hardly induce other courts to overrule their own decisions, even if they admire the other. In *Terry's Case* the act of suicide was committed during insanity. The court not only held that the provision "die by his own hand" was inapplicable, but that even if the act was voluntary there could still be a recovery, as the insured's reasoning powers were so far impaired that he did not understand the moral character of the act, &c. It would furnish an interesting labor to some gentleman of leisure to go carefully through the reports and ascertain exactly how many decisions were approved, affirmed, disapproved, doubted and criticised in this case, whether mentioned by name or not.

No one can estimate the loss to the community in the great uncertainty that prevails, the great loss by litigation, the great mass of litigation itself, by reason of the uncertainty and the refined distinctions with which the books abound, making each litigant hope that his case will not be governed by such and such a one, because there are minor points of difference.

It is probable, however, that the difficulties and discrepancies on this point will be gradually removed by the general adoption by insurance companies of a clause in their policies relieving them from liability where the assured dies by his own hand, whether sane or insane. Such a condition was sustained in *Pierce* v. *Traveller's Life Ins. Co.*, 34 Wis. 389, where it was said by Chief Justice DIXON that the plain meaning of these words was to include every kind of *intentional* self-destruction, without reference to the moral responsibility of the person.

This decision has been quoted approvingly, and followed by the Supreme Court of the United States at the present term, in *Bigelow, Adm'x*, v. *The Berkshire Life Ins. Co.* The policy in that case contained a condition in avoidance if the insured should die by suicide, *sane or insane*. The defendant pleaded that the insured died from a pistol shot wound inflicted by himself with intent to destroy his life. To this the plaintiff replied, that the insured at the time when he fired the shot was of unsound mind and wholly unconscious of the act. To this replication defendant demurred, and the demurrer was sustained by the court below. The decision was affirmed by the Supreme Court, DAVIS, J., delivering the opinion, in which he

maintained the substantial identity of the phrases "suicide" and "death by his own hand," as previously decided in *Ins. Co.* v. *Terry*, 15 Wall. 580, and held that the plain import and purpose of the introduction of the clause in question were, because the line between sanity and insanity is often shadowy and difficult to define, to take the subject from the domain of controversy and by stipulation exclude all liability by reason of the death of the party by his own act whether he was at the time a responsible moral agent or not. "Nothing can be clearer," says the learned judge, "than that the words sane or insane were introduced for the purpose of excepting from the operation of the policy any intended self-destruction, whether the insured was of sound mind or in a state of insanity. These words have a precise, definite, well-understood meaning. * * * It is unnecessary to discuss the various phases of insanity in order to see whether a possible state of circumstances might not arise which would defeat the condition. It will be time to decide this question when such a case is presented. For the purposes of this suit it is enough to say that if the assured was conscious of the physical nature of the act he was committing, and intended by it to cause his death, the policy is avoided, although at the time he was incapable of judging between right and wrong and did not understand the moral consequences of what he was doing. Any other construction would deny to the insurance companies the right to declare the sense in which they used words of limitation in their policies."

The general adoption of this clause by insurers, and a similar construction of it by the courts, would seem to open a way to uniformity in the rules of law upon this increasingly important subject; a most desirable result, which, except in some such mode, would seem to be at present almost beyond hope of attainment.

C. H. H.

Supreme Court of Minnesota.

THE STATE EX REL. BAXTER *v.* L. M. BROWN.

A day, in its ordinary meaning, is the space of twenty-four hours from midnight to midnight.

Where a constitution provides for an election to fill a vacancy in the office of judge "at the first election that occurs more than thirty days after the vacancy shall have happened," the word "days" must be taken to be used in its ordinary meaning; and therefore neither the day on which the vacancy happens nor the day of the election can be included in computing the time.

QUO WARRANTO. ANDREW G. CHATFIELD, judge of the Eighth Circuit, died October 3d 1875, and on October 27th the respondent was appointed to the vacancy thus caused, and entered on the duties of the office. At the general election, held November 2d 1875, the relator, Luther L. Baxter, was elected to the office of judge of the Eighth Circuit, and was duly qualified, but the respondent claiming to hold and exercise the office, this proceeding